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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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11/10/2003

James Marrs

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MERCHANT & GOULD PC  
P.O. BOX 2903  
MINNEAPOLIS, MN 55402-0903

EXAMINER

CAMPBELL, VICTORIA P

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

05/12/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



### **DETAILED ACTION**

This is the second Office Action based on the 10/705736 application filed November 10, 2003. Claims 1-12 as originally filed are currently pending and considered below.

#### ***Specification***

1. The disclosure is objected to because of the following informalities:

The description of Figure 13 on Page 2 of the specification references the same figure. A figure can not be an end view of itself.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3 and 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Fischell (US 5,545,143).

Fischell discloses a site for subcutaneous infusion device having a base, a cannula 221 (see figs. 10-12, 15-17), a single unitary diaphragm which has an open end a closed end and a sidewall and an internal reservoir in fluid communication with the cannula through the open end. The base 210 is cylindrical and includes a top side, a bottom side and defines a central aperture extending through the base and including an

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adhesive portion 230. The base 210 further comprises a member having first and second ends wherein the member is positioned in the central aperture of the base and coupled to the first end, an interior wall of the member defining a cavity and the second end of the member being open.

### ***Allowable Subject Matter***

4. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claims 9-12 are allowable since the prior art fails to teach a device in combination with all the structural elements and functional relationships and further comprising the base having slots on the top side and the member having a groove along with 8 apertures from the interior wall to the groove.

### ***Response to Arguments***

6. Applicant's arguments filed January 9, 2008 have been fully considered but they are not persuasive.

7. Regarding applicant's argument that the diaphragm of Fischell is not pierced through a sidewall in order to deliver the medicine, the examiner disagrees. The examiner notes that the closed end of Fischell, which is pierced during both the introduction of the cannula and the delivery of medication, is a sidewall of the device.

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The "upper end" of the diaphragm is as much a sidewall of the diaphragm as any other portion, and therefore a sidewall of the diaphragm is pierced during drug delivery.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTORIA P. CAMPBELL whose telephone number is (571)270-5035. The examiner can normally be reached on Monday-Thursday, 7-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victoria P Campbell  
Examiner, AU 3763

/Nicholas D Lucchesi/  
Supervisory Patent Examiner, Art Unit 3763